

REMARKS/ARGUMENTS

Favorable reconsideration and allowance of the present application is respectfully requested. Claims 1-6, 8-17, 19 and 20 are pending in the above application of which claims 1, 2 and 19 are independent. By the above amendment, claim 18 has been cancelled without prejudice.

The Office Action dated April 7, 2010, has been received and carefully reviewed. In that Office Action, claims 1-6 and 18-20 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite, claims 1, 5, 6, 9, 11, 12, 17 and 18 were rejected under 35 U.S.C. 102(b) as being anticipated by DE 10132485 ("Seewald"), and claims 2-4 and 19-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Seewald in view of Cribari. In addition, claim 8 was rejected under 35 U.S.C. 103(a) as being unpatentable over Seewald in view of Chiba, claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over Seewald in view of Gowan, claims 13 and 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Seewald in view of Yamamoto '935, and claim 15 was rejected under 35 U.S.C. 103(a) as being unpatentable over Seewald in view of Yamamoto '458. It is believed that all pending claims are allowable over the art of record, and reconsideration and allowance of claims 1-6, 8-17, 19 and 20 is respectfully requested in view of the above amendments and the following remarks.

INFORMATION DISCLOSURE STATEMENT

The Office Action does not include an initialed copy of the PTO SB/08 filed with an IDS on March 20, 2009. Instead, the examiner is requiring that Applicant explain

why the cited references are material to patentability. It is respectfully submitted that there is no legal authority for requiring an applicant to explain why submitted references are believed to be material to patentability. If the submitted references were completely unrelated to the present invention, Applicant would understand the examiner's concern. However, it is noted that the present invention includes tanks connected by tubes or pipes and that the references listed in the March 20, 2009, IDS include tanks connected by tubes, albeit in a field not related to heat exchangers. The inventors thus may have believed there were structures disclosed in the references that could be relevant to patentability of some claim. Applicant submits that the references may constitute non-analogous art; however this legal determination is not required before submitting the references in an IDS. The lined-out references submitted on March 20, 2009, were not submitted inadvertently, and the consideration of these references is respectfully requested.

37 C.F.R. 1.56 provides that the "duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed...." Since the material has been submitted in the manner prescribed by the patent rules, Applicant submits that Applicant has complied with the duty of disclosure whether or not the examiner returns an initialed copy of the relevant PTO SB/08.

REJECTIONS UNDER 35 U.S.C. 112, SECOND PARAGRAPH

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, because the claimed

heat exchanger does not include a "removably mounted" cover in its final form. The phrase "removably mounted" has been removed from claim 1 and replaced with the word "arranged" that was used in original claim 1. The above amendment essentially returns claim 1 to its original form, except that certain objectionable phrases such as "in particular" are no longer present in the claim. It is therefore respectfully submitted that this amendment does not raise new issues because the claim has essentially been returned to its original form which was searched once before. This amendment will simplify issues for possible appeal, and the entry of the amendment is therefore respectfully requested.

Claim 2 has been rewritten in independent form, and the phrase "removably mounted" has been deleted from the claim. Claim 2 is now essentially the same as original claim 2, and it is respectfully submitted that this amendment can be entered to simplify issues for appeal without raising new issues.

Claim 19 has been rewritten to include the limitations of claim 18, and claim 18 has been cancelled. Amended claim 19 still includes the phrase "removably mounted." Applicant is amenable to removing this phrase when the art-based rejections of claim 19 are withdrawn. The phrase is being left in claim 19 at this time to avoid potentially changing the scope of the claim (which did not appear in the original application) in a manner that would require further search and which might prevent the above amendments of claims 1 and 2 from being entered.

GENERAL COMMENTS

The following remarks are directed primarily to the allowability of claims 2 and 19.

If claim 2 is found to be allowable, Applicant may amend the remaining ones of claims 3-17 to depend from claim 2. However, it is believed that such an amendment at this time might raise new issues by combining the limitations of various dependent claims in a manner that has not been considered by the examiner. Applicant reserves the right to address the allowability of all claims on appeal or in a continuation application if necessary.

REJECTIONS UNDER 35 U.S.C. 102(b)

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seewald in view of Cribari. Claim 2 recites a heat exchanger for a motor vehicle air conditioning system that includes at least one collecting tank made of sheet metal and that is divided in the longitudinal direction into at least two chambers. The ends of pipes are introduced in a base thereof, and the collecting tank exhibits a tunnel-shaped collecting tank part, an essentially flat collecting tank part which forms the base, and covers which are arranged in each case on a front side. At least one of the covers is embodied in a flat manner, at least in the area of its outer edge, and is positioned in the collecting tank with a positive fit. Furthermore, the at least one of the covers is introduced from the front side and on a collecting tank side lies against a number of stops that are formed on the tunnel-shaped part of the collecting tank and/or on the flat part of the collecting tank. The Office Action acknowledges that Seewald does not show at least stops formed on a tunnel-shaped part of a collecting tank. However, the Office Action indicates that it would have been obvious to add such stops to Seewald based on the teachings of Cribari. It is respectfully submitted that the problem addressed by Cribari

does not exist in Seewald, and that one of ordinary skill in the art would have no reason to modify Seewald as indicated in the Office Action. For this reason, a prima facie case of obviousness has not been presented in connection with claim 2, and claim 2 is submitted to be allowable.

Seewald discloses a flat member 9, Figure 1a, having end covers 2 that can be folded into a position as shown in Figure 2. These elements are made of sheet metal according to the machine translation of Seewald from the EPO website, and one of ordinary skill in the art would understand that bent-up sheet metal end covers can remain in the position of Figure 2, approximately perpendicular to base 9, without additional support. As shown in Figure 3, a cover 15 can be placed over the base 9 and end covers 2. It does not appear that the position of end covers 2 changes when cover 15 is attached. Cribari teaches a method of holding a loose member 6 in position. However, there is no loose member in Seewald that needs to be retained in a given position; end covers 2 will stay in position without the use of stops as proposed by the Office Action. One of ordinary skill in the relevant art would therefore have no reason to provide Seewald with stops as suggested by the Office Action. Because a proper reason for modifying Seewald has not been provided, a prima facie case of obviousness has not been presented, and claim 2 is submitted to be allowable over Seewald and Cribari for at least this reason.

A similar analysis applies to claim 19. Because a proper reason for modifying Seewald based on Cribari has not been identified, claim 19 is submitted to be allowable over the art of record as well.


CONCLUSION

In view of the above amendments and remarks, it is believed that at least claims 2 and 19 are in condition for allowance. The remaining claims may be amended to depend from claims 2 and 19 if claims 2 and 19 are allowed. Wherefore, favorable reconsideration and allowance of claims 2 and 19 is earnestly solicited. If the examiner believes that any additional changes would place the application in better condition for allowance, the examiner is invited to contact the undersigned attorney at the telephone number listed below.

Deposit Account Authorization

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 50-3828 and please credit any excess fees to such deposit account.

Respectfully submitted,



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